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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION

19 HYPERMEDIA NAVIGATION LLC,

20 Plaintiff,

21 v.

22 FACEBOOK, INC.,

23 Defendant.

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26 Case No. 4:17-cv-05383-HSG

27 **PROTECTIVE ORDER REGARDING
THE DISCLOSURE AND USE OF
DISCOVERY MATERIALS**

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 **“CONFIDENTIAL” Information or Items:** information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

1 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
2 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
3 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

4 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely sensitive
5 “Confidential Information or Items” representing computer code and associated comments and revision
6 histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the
7 algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party
8 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

9 2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel does
10 not include Outside Counsel of Record or any other outside counsel.

11 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity not
12 named as a Party to this action.

13 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action but are
14 retained to represent or advise a party to this action and have appeared in this action on behalf of that party or
15 are employed by a law firm which has appeared on behalf of that party.

16 2.12 Party: any party to this action, including all of its officers, directors, employees, consultants,
17 retained experts, and Outside Counsel of Record (and their support staffs).

18 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this
19 action.

20 2.14 Professional Vendors: persons or entities that provide litigation support services (e.g.,
21 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
22 retrieving data in any form or medium) and their employees and subcontractors.

23 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
24 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as “HIGHLY
25 CONFIDENTIAL – SOURCE CODE.”

26 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
27 Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected Material (as defined
3 above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
4 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by
5 Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this
6 Stipulation and Order do not cover the following information: (a) any information that is in the public domain
7 at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
8 Receiving Party as a result of publication not involving a violation of this Order, including
9 becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving
10 Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
11 obtained the information lawfully and under no obligation of confidentiality to the Designating Party.
12 However, if the accuracy of information is confirmed only through the review of Protected Material,
13 then the information shall not be considered to be in the public domain. For example,
14 unsubstantiated media speculations or rumors that are later confirmed to be accurate through access
15 to Protected Material are not “public domain” information. Such information is explicitly included
16 in the definition of “Protected Material” set forth in paragraph 2.15 above. Any use of Protected
17 Material at trial shall be governed by a separate agreement or order.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations imposed by this
20 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
21 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
22 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
23 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
24 time limits for filing any motions or applications for extension of time pursuant to applicable law
25 and the time limits for filing a petition for writ of certiorari to the Supreme Court of the United
26 States if applicable.

27 5. DESIGNATING PROTECTED MATERIAL

28 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or

1 Non-Party that designates information or items for protection under this Order must take care to
2 limit any such designation to specific material that qualifies under the appropriate standards. To the
3 extent it is practical to do so, the Designating Party must designate for protection only those parts of
4 material, documents, items, or oral or written communications that qualify – so that other portions of
5 the material, documents, items, or communications for which protection is not warranted are not
6 swept unjustifiably within the ambit of this Order.

7 If it comes to a Designating Party's attention that information or items that it designated for
8 protection do not qualify for protection at all or do not qualify for the level of protection initially
9 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
10 mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
12 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
13 Disclosure or Discovery

14 Material that qualifies for protection under this Order must be clearly so designated before
15 the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
18 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
19 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or
20 “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected material.

21 (b) for testimony given in deposition or other pretrial or trial proceedings, that the
22 Designating Party either (1) identify on the record or (2) identify, in writing, within 21 days of
23 receipt of the final transcript, that the transcript shall be treated as “CONFIDENTIAL,” “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE
25 CODE.”

26 Parties shall give the other parties notice if they reasonably expect a deposition or other
27 pretrial or trial proceeding to include Protected Material so that the other parties can ensure that only
28 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”

1 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition or
2 other pretrial or trial proceedings shall not in any way affect its designation as “CONFIDENTIAL”
3 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL
4 – SOURCE CODE.”

5 Transcripts containing Protected Material shall have an obvious legend on the title page that
6 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
7 that have been designated as Protected Material and the level of protection being asserted by the
8 Designating Party. The Designating Party shall inform the court reporter of these requirements.
9 Any transcript that was not designated on the record pursuant to the first paragraph of section 5.2(b)
10 above shall be treated during the 21-day period for designation as if it had been designated
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety. After the expiration
12 of that period or as of such earlier time that such transcript is designated, the transcript shall be
13 treated only as actually designated.

14 (c) for information produced in some form other than documentary and for any other tangible
15 items, that the Producing Party affix in a prominent place on the exterior of the container or
16 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
18 CODE”. If only a portion or portions of the information or item warrant protection, the Producing
19 Party, to the extent practicable, shall identify the protected portion(s) and specify the level of
20 protection being asserted.

21 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
22 information or items does not waive the Designating Party’s right to secure protection under this
23 Order for such material. Upon correction of a designation, the Receiving Party must make
24 reasonable efforts to assure that the material is treated in accordance with the provisions of this
25 Order.

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
28 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
2 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
3 confidentiality designation by electing not to mount a challenge promptly after the original
4 designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
6 by providing written notice of each designation it is challenging and describing the basis for each
7 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
8 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
9 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
10 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
11 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
12 Party must explain the basis for its belief that the confidentiality designation was not proper and
13 must give the Designating Party an opportunity to review the designated material, to reconsider the
14 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
15 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
16 has engaged in this meet and confer process first or establishes that the Designating Party is
17 unwilling to participate in the meet and confer process in a timely manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
19 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
20 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
21 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
22 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
23 competent declaration affirming that the movant has complied with the meet and confer
24 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
25 motion including the required declaration within 21 days (or 14 days, if applicable) shall
26 automatically waive the confidentiality designation for each challenged designation. In addition, the
27 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
28 good cause for doing so, including a challenge to the designation of a deposition transcript or any

1 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
2 competent declaration affirming that the movant has complied with the meet and confer
3 requirements imposed by the preceding paragraph.

4 The burden of persuasion in any such challenge proceeding shall be on the Designating
5 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
6 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
7 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
8 retain confidentiality as described above, all parties shall continue to afford the material in question
9 the level of protection to which it is entitled under the Producing Party's designation until the court
10 rules on the challenge.

11 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

12 7.1 **Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
13 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
15 the categories of persons and under the conditions described in this Order. When the litigation has
16 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
17 DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a location and in a
19 secure manner that ensures that access is limited to the persons authorized under this Order.

20 7.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise ordered
21 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
22 information or item designated “CONFIDENTIAL” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
24 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
25 this litigation;

26 (b) House Counsel of the Receiving Party to whom disclosure is reasonably necessary for
27 this litigation, as well as their employees or staff to whom it is reasonably necessary to disclose the
28 information, and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants including mock jurors who have signed a confidentiality agreement, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary, with the consent of the Designating Party or as ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

(c) the court and its personnel;

(d) court reporters and their staff,

(e) professional jury or trial consultants including mock jurors who have signed a

1 confidentiality agreement, and Professional Vendors to whom disclosure is reasonably necessary for
2 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
3 and

4 (f) the author or recipient of a document containing the information or a custodian or other
5 person who otherwise possessed or knew the information.

6 7.4 Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
7 Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –
9 SOURCE CODE” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
11 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
12 this litigation;

13 (b) up to three¹ Experts of the Receiving Party (1) to whom disclosure is reasonably
14 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
15 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.5, below, have been
16 followed;

17 (c) the Court and its personnel;

18 (d) court reporters and their staff,

19 (e) professional jury or trial consultants (but not mock jurors), and Professional Vendors to
20 whom disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A), except that and

22 (f) the author or recipient of a document containing the information or a custodian or other
23 person who otherwise possessed or knew the information.

24 7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
26 Items to Experts.

27
28 ¹ Staff, direct, and indirect reports count against this total.

1 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a
2 Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
3 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
4 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3 and 7.4 first must make a written
5 request to the Designating Party that (1) identifies the general categories of “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
7 CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets
8 forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a
9 copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies
10 each person or entity from whom the Expert has received compensation or funding for work in his or
11 her areas of expertise or to whom the expert has provided professional services, including in
12 connection with a litigation, at any time during the preceding five years and the party to the litigation
13 for whom such work was done, (6) identifies (by name and number of the case, filing date, and
14 location of court) any litigation in connection with which the Expert has offered expert testimony,
15 including through a declaration, report, or testimony at a deposition or trial, during the preceding
16 five years, and (7) identifies any patents or patent applications in which the Expert is identified as an
17 inventor or applicant, is involved in prosecuting or maintaining, or has any pecuniary interest. With
18 regard to the information sought through part (5) of this disclosure, if the Expert believes any of this
19 information is subject to a confidentiality obligation to a third party, then the Expert should provide
20 whatever information the Expert believes can be disclosed without violating any confidentiality
21 agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with
22 the Designating Party regarding any such engagement.

23 (b) A Party that makes a request and provides the information specified in the preceding
24 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,
25 within 10 days of delivering the request, the Party receives a written objection from the Designating
26 Party. Any such objection must set forth in detail the grounds on which it is based.

27 (c) A Party that receives a timely written objection must meet and confer with the
28 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement

1 within ten days of the written objection. If no agreement is reached, the Party seeking to make the
2 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with
3 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion
4 must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to
5 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
6 suggest any additional means that could be used to reduce that risk. In addition, any such motion
7 must be accompanied by a competent declaration describing the parties' efforts to resolve the matter
8 by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth
9 the reasons advanced by the Designating Party for its refusal to approve the disclosure.

10 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
11 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
12 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

13 8. **PROSECUTION BAR**

14 Absent written consent from the Producing Party, any individual bound by this agreement
15 who receives and accesses "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
16 "HIGHLY CONFIDENTIAL – SOURCE CODE" information shall not be involved in the
17 prosecution of patents or patent applications relating to the subject matter of this action as well as the
18 subject matter of the "HIGHLY CONFIDENTIAL – SOURCE CODE" information which is
19 accessed, including without limitation the patents asserted in this action and any patent or
20 application claiming priority to or otherwise related to the patents asserted in this action, before any
21 foreign or domestic agency, including the United States Patent and Trademark Office ("the Patent
22 Office"). For purposes of this paragraph, "prosecution" includes directly or indirectly drafting,
23 amending, advising, or otherwise affecting the scope or maintenance of patent claims. Prosecution
24 includes, for example, original prosecution, reissue, and reexamination and other post-grant
25 proceedings. To avoid any doubt, "prosecution" as used in this paragraph does not include
26 representing a party challenging a patent before a domestic or foreign agency (including, but not
27 limited to, a reissue protest, *ex parte* reexamination, *inter partes* reexamination, post grant review,
28 covered business method patent review, or *inter partes* review). This Prosecution Bar shall begin

1 when “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
2 CONFIDENTIAL – SOURCE CODE” information is first received and accessed by the affected
3 individual and shall end two (2) years after final termination of this action.

4 **SOURCE CODE**

5 (a) To the extent production of source code becomes necessary in this case, a Producing
6 Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it comprises
7 or includes extremely sensitive “Confidential Information or Items” representing computer code and
8 associated comments and revision histories, formulas, engineering specifications, or schematics that
9 specifically define or otherwise describe the algorithms or structure of software or hardware designs
10 in sufficient detail that their disclosure effectively amounts to a disclosure of computer code, and
11 disclosure of which to another Party or Non-Party would create a substantial risk of serious harm
12 that could not be avoided by less restrictive means.

13 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
14 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’
15 EYES ONLY” information including the Prosecution Bar set forth in Paragraph 8, and may be
16 disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL – SOURCE CODE”
17 information may be disclosed, as set forth in Paragraphs 7.4 and 7.5.

18 (c) Any source code produced in discovery shall be made available for inspection, in a
19 format allowing it to be reasonably reviewed and searched, during normal business hours (9:00 am
20 to 6:00 pm local time) or at other mutually agreeable times, at an office of the Producing Party’s
21 counsel selected by the Producing Party or another mutually agreed upon location. The computer
22 containing source code will be made available upon reasonable notice to the Producing Party, which
23 shall not be less than five (5) business days in advance of the requested inspection. The source code
24 shall be made available for inspection on a secured computer without Internet access or network
25 access to other computers, in a secured room, and the Receiving Party shall not copy, remove, or
26 otherwise transfer any portion of the source code onto any recordable media or recordable device.
27 For the avoidance of doubt, this prohibition against copying of any portion of the source code means
28 that no copying of actual lines of code into any notes made during the review is permitted. The

1 Producing Party may visually monitor the activities of the Receiving Party's representatives during
2 any source code review, but only to ensure that there is no unauthorized recording, copying, or
3 transmission of the source code. All persons viewing Source Code shall sign on each day they view
4 Source Code a log that will include the names of persons who enter the secured room to view the
5 Source Code and when they enter and depart. Electronic devices, including but not limited to cell
6 phones, laptop computers, flash drives, hard drives, voice recorders, personal digital assistants, and
7 cameras are not permitted in the secured room. The Producing Party will make available in the
8 secured room a landline telephone for use by the Reviewing Party's representatives for the purpose
9 of communicating with individuals authorized to review Source Code who are not present for the
10 Source Code review (but reading of actual lines of code over the telephone is not permitted).

11 (d) The Receiving Party may request paper copies of limited portions of source
12 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
13 other papers, or for deposition or trial, but shall not request paper copies for the purpose of
14 reviewing the source code other than electronically as set forth in paragraph (c) in the first instance.
15 The Producing Party shall provide all such source code in non-copyable paper form, including Bates
16 numbers and the label "HIGHLY CONFIDENTIAL – SOURCE CODE." The Producing Party may
17 challenge the amount of source code requested in hard copy form pursuant to the dispute resolution
18 procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the "Challenging
19 Party" and the Receiving Party is the "Designating Party" for purposes of dispute resolution. Absent
20 good cause, the Receiving Party shall not request printing of any continuous block of "HIGHLY
21 CONFIDENTIAL – SOURCE CODE" Information that results in more than fifty (50) printed pages
22 per copy. Absent a showing of good cause, the Receiving Party may not request a total of more than
23 five hundred (500) pages of printed "HIGHLY CONFIDENTIAL—SOURCE CODE" material..

24 (e) The Receiving Party shall maintain a log of all paper copies of the Source Code. The
25 log shall include the names of the reviewers and/or recipients of paper copies and locations where
26 the paper copies are stored. Upon one (1) day's advance notice to the Receiving Party by the
27 Producing Party, the Receiving Party shall provide a copy of this log to the Producing Party. The
28 Receiving Party shall maintain all paper copies of any printed portions of the source code in a

1 secured, locked area. The Receiving Party shall not create any electronic or other images of the
2 paper copies and shall not convert any of the information contained in the paper copies into any
3 electronic format. The Receiving Party shall only request additional paper copies if such additional
4 copies are (1) necessary to attach to court filings, pleadings, or other papers (including a testifying
5 expert's expert report), (2) necessary for deposition, or (3) necessary for trial. The Receiving Party
6 shall not request paper copies for the purposes of reviewing the source code other than electronically
7 as set forth in paragraph (c) in the first instance. To the extent a deposition is likely to involve
8 source code, the Party taking the deposition, shall provide at least seven (7) days written notice of
9 that fact, and the Producing Party will make a source code computer available at the deposition,
10 minimizing the need for additional paper copies of source code. Any paper copies used during a
11 deposition shall be retrieved by the Producing Party at the end of each day and must not be given to
12 or left with a court reporter or any other individual.

13 10. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
14 **LITIGATION**

15 10.1 If a Party is served with a subpoena or a court order issued in other litigation that
16 compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or
17 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
18 SOURCE CODE" that Party must:

19 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
20 of the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
22 other litigation that some or all of the material covered by the subpoena or order is subject to this
23 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

24 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
25 Designating Party whose Protected Material may be affected.

26 If the Designating Party timely seeks a protective order, the Party served with the subpoena
27 or court order shall not produce any information designated in this action as "CONFIDENTIAL" or
28 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –

1 SOURCE CODE" before a determination by the court from which the subpoena or order issued,
2 unless the Party has obtained the Designating Party's permission. The Designating Party shall bear
3 the burden and expense of seeking protection in that court of its confidential material – and nothing
4 in these provisions should be construed as authorizing or encouraging a Receiving Party in this
5 action to disobey a lawful directive from another court.

6 10.2 The provisions set forth herein are not intended to, and do not, restrict in any way the
7 procedures set forth in Federal Rule of Civil Procedure 45(d)(3) or (f).

8 11. **A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
9 **LITIGATION**

10 (a) The terms of this Order are applicable to information produced by a Non-Party in this
11 action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
12 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE." Such information produced by
13 Non-Parties in connection with this litigation is protected by the remedies and relief provided by this
14 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
15 additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
17 Party's confidential information in its possession, and the Party is subject to an agreement with the
18 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

- 19 1. promptly notify in writing the Requesting Party and the Non-Party that some
20 or all of the information requested is subject to a confidentiality agreement with a Non-Party; and
- 21 2. promptly provide the Non-Party with a copy of the Stipulated Protective
22 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the
23 information requested.

24 (c) If the Non-Party fails to object or seek a protective order from this court
25 within a reasonable period of time after receiving the notice and accompanying information,
26 including but not limited to any contractual notice period in an agreement between the Producing
27 Party and the Non-Party covering the confidentiality and/or disclosure of the information requested,
28 the Producing Party may produce the Non-Party's confidential information responsive to the

1 discovery request. If the Non-Party timely seeks a protective order, the Producing Party shall not
2 produce any information in its possession or control that is subject to the confidentiality agreement
3 with the Non-Party before a determination by the Court.

4 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 Protected Material to any person or in any circumstance not authorized under this Stipulated
7 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
8 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
9 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of
10 all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment
11 and Agreement to Be Bound” that is attached hereto as Exhibit A.

12 **13. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

13 When a Producing Party gives notice to Receiving Parties that certain produced material is
14 subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those
15 set forth in Federal Rule of Civil Procedure 26(b)(5)(B). A Producing Party may assert privilege or
16 protection over produced documents at any time by notifying the Receiving Party in writing of the
17 assertion of privilege or protection. In addition, information that contains privileged matter or
18 attorney work product shall be returned or destroyed immediately by the Receiving Party if such
19 information appears on its face to have been inadvertently produced or if requested. After being
20 notified, a Receiving Party must promptly return or destroy the specified information until the claim
21 is resolved.

22 Pursuant to Federal Rule of Evidence 502(d) and (e), the production of a privileged or work-
23 product-protected document is not a waiver of privilege or protection from discovery in this case or
24 in any other federal or state proceeding. For example, the mere production of privilege or work-
25 product-protected documents in this case as part of a mass production is not itself a waiver in this
26 case or any other federal or state proceeding.

27 **14. MISCELLANEOUS**

28 **14.1 Right to Further Relief.** Nothing in this Order abridges the right of any person to seek

1 its modification by the court in the future.

2 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
3 no Party waives any right it otherwise would have to object to disclosing or producing any
4 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
5 Party waives any right to object on any ground to use in evidence of any of the material covered by
6 this Protective Order.

7 14.3 Export Control. The Protected Material disclosed by the Producing Party may contain
8 technical data subject to export control laws and therefore the release of such technical data to
9 foreign persons or nationals in the United States or elsewhere may be restricted. The Receiving
10 Party shall take measures necessary to ensure compliance with applicable export control laws,
11 including confirming that no unauthorized foreign person has access to such technical data.

12 No Protected Material may leave the territorial boundaries of the United States of
13 America. Without limitation, this prohibition extends to Protected Information (including copies) in
14 physical and electronic form. The viewing of Protected Information through electronic means
15 outside the territorial limits of the United States of America is similarly prohibited. The restrictions
16 contained within this paragraph may be amended through the express written consent of the
17 Producing Party to the extent that such agreed to procedures conform with applicable export control
18 laws and regulations. Nothing in this paragraph is intended to remove any obligation that may
19 otherwise exist to produce documents currently located in a foreign country.

20 14.4 Filing Protected Material. Without written permission from the Designating Party or
21 a court order secured after appropriate notice to all interested persons, a Party may not file in the
22 public record in this action any Protected Material.

23 14.5 Privilege Logs. No Party is required to identify on its respective privilege log any
24 document or communication dated after the filing of the Complaint. The parties shall exchange their
25 respective privilege logs at a time to be agreed upon by the parties following the production of
26 documents, or as otherwise ordered by the Court.

27 15. FINAL DISPOSITION

28 Within 60 days after the final disposition of this action, as defined in paragraph 4, each

1 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
2 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
3 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
4 the Protected Material is returned or destroyed, the Receiving Party must submit a written
5 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
6 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material
7 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
8 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
9 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
10 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
11 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
12 and expert work product, even if such materials contain Protected Material, with the exception of
13 paper copies of source code. Any such archival copies that contain or constitute Protected Material
14 remain subject to this Protective Order as set forth in Section 4 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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4 NI, WANG & MASSAND, PLLC
5

6 Dated: June 13, 2018

7 By: /s/ Hao Ni
8 Hao Ni

9
10 **Attorney for Plaintiff**
11 **Hypermedia Navigation LLC**

12 Dated: June 13, 2018

13 COOLEY LLP
14

15 By: /s/ Daniel J. Knauss
16 Daniel J. Knauss

17 **Attorney for Defendant**
18 **Facebook, Inc.**

19 PURSUANT TO STIPULATION, IT IS SO ORDERED.
20

21 DATE: June 13, 2018

22 
23 Hon. Haywood S. Gilliam, Jr.
24 UNITED STATES DISTRICT JUDGE
25
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28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for the
Northern District of California on [date] in the case of *Hypermedia Navigation, LLC v. Facebook,*
Inc., Case No. 4:17-cv-05383-HSG. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Stipulated Protective Order to
any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as
my California agent for service of process in connection with this action or any proceedings related
to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name:

[printed name]

Signature: _____
[signature]